STATE OF MICHIGAN

COURT OF APPEALS

ROBERT BARNETT, Personal Representative of the Estate of EVELYN BARNETT,

Plaintiff-Appellee/Cross-Appellant,

v

MATTHEW JOHN MCELROY,

Defendant,

and

AUTO OWNERS INSURANCE COMPANY and HOME OWNERS INSURANCE COMPANY,

Defendants-Appellants/Cross-Appellees.

UNPUBLISHED
August 2, 2007

No. 267836
Oakland Circuit Court
LC No. 2003-046892-NF

Before: White, P.J., and Saad and Murray, JJ.

MURRAY, J. (*concurring*).

I concur with the result and reasoning of the lead opinion, except for the conclusion that plaintiff's intentional infliction of emotional distress claim should have been dismissed because the conduct of defendant was not sufficiently outrageous. In my view, the trial court properly denied defendant's motion for a directed verdict on that basis because the conduct at issue here was more egregious than that found sufficient in *McCahill v Commercial Union Ins Co.,* 179 Mich App 761, 770; 446 NW2d 579 (1989). Though not binding on our Court because it was decided before November 1, 1990, MCR 7.215(J)(1), *McCahill* was binding authority on the trial court. And, despite whatever reservations I may have about the correctness of that decision, it was nonetheless part of the case law that was available to guide the parties and trial court at the time the motion was decided. Hence, I would not reverse on that basis.

In any event, because I agree that plaintiff's evidence did fall below that which is required to prove that she suffered "severe emotional distress", *Haverbush v Powelson*, 217 Mich App 228, 235-236; 551 NW2d 206 (1996), I concur in the reversal of the judgment in favor of plaintiff on her claim of intentional infliction of emotional distress.

/s/ Christopher M. Murray